Supreme Court, U.S.
FILED
MAR 23 1999
OFFICE OF THE CLERK

No. 98-1231

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

THE BANKRUPTCY ESTATE OF ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., JOSEPH UNANUE,
FRANK UNANUE *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The
Supreme Court of The State Of New Jersey

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner respectfully submits this Reply Brief in Support of the Petition for a Writ of Certiorari to review the judgment of the Supreme Court of the State of New Jersey issued on November 5, 1998 and the decisions below.

JURISDICTION

In Respondents' Brief in Opposition, it is stated that if this Court has jurisdiction, it is pursuant to 28 U.S.C. § 1257(a) rather than 28 U.S.C. § 1254(1). Petitioner acknowledges in reply that this Court's jurisdiction is indeed pursuant to 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE IN REPLY

Supreme Court Rule 15.2 notes that counsel have an obligation to the Court to point out in the brief in opposition any perceived misstatements made in the petition. In keeping with the apparent intent of that rule, counsel for the Petitioner addresses hereinafter statements in the brief in opposition which could be considered as misstatements in that they have the capacity to lead the Court to an incorrect understanding of the events and procedure below.

At page 2 of the Opposition Brief the Respondents assert that Charles Unanue, not the bankruptcy estate, is the petitioner. They also assert at page 7 of the Opposition Brief that the trustee of the bankruptcy estate was only a "nominal party" below. These assertions are highly inaccurate.

Contrary to the Respondents' characterization of the role of the trustee, the judgment below was clearly entered at the Respondents' behest against the bankruptcy estate, as well as Charles Unanue individually. Thus, the Respondents recognized that Charles Unanue and the bankruptcy estate were two different entities.

That the bankruptcy estate was the sole party to the action at the time of judgment is made clear by the trial court's order, entered with Respondents' consent, pursuant to which the bankruptcy estate was substituted into the case as the sole defendant and Charles Unanue, individually, was substituted out.

Moreover, the interests of Charles Unanue and the trustee of the bankruptcy estate were different, even to the extent that they were litigants against each other in an adversary proceeding before the bankruptcy court.

Notice of appeal from the trial court judgment was filed on behalf of the bankruptcy estate. Charles Unanue also filed a notice of appeal on behalf of himself. Before the Appellate Division of the New Jersey Superior Court, a motion was made on behalf of the bankruptcy estate to consolidate the two appeals. That motion was denied by the court, and this case has thereafter proceeded in accordance with that denial as two separate appeals.

It is therefore disingenuous for either the Appellate Division of the New Jersey Superior Court (10a–11a) or the Respondents (Opposition Brief, pp. 2-3, n. 2) to criticize the existence to two separate appeals and petitions for a writ of certiorari.

Respondents further inaccurately state, at page 7, note 6 of the Opposition Brief, that Charles Unanue instructed counsel for the bankruptcy estate not to appear in response to the Respondents' summary judgment motion. Not only is there no reference to the record for any such instruction, but the assertion ignores the fact that the client in this matter that was entitled to instruct counsel was the trustee of the bankruptcy estate, not Charles Unanue. That the trustee did not appear in response to the motion in person or by counsel was a determination that could only have been made by the trustee.

The Respondents have compounded their inaccuracy with inconsistency. While conceding that the trustee was not represented at the hearing on the Respondents' summary judgment motion, the Respondents also assert at page 8 of the Opposition Brief that "all parties (including Petitioner) had briefed and orally argued" the motion before the trial court. In reality, as the Respondents conceded, the trustee was not present, either in person or by counsel. Rather than "all parties" having briefed and argued the motion, the only parties to have done so were the Respondents – *i.e.*, the trustee was not present, and Charles Unanue was not then a party. He was present at the hearing only because the court ordered him to appear.

The Respondents assert as a fact that the courts below found that Prudencio Unanue was domiciled in New Jersey commencing in 1929. (Opposition Brief at pp. 3, 6). The trial court did not so find, but was careful to only hold that as of November 16, 1970 (92a) and March 17, 1976 (93a) he was so domiciled. There was no other finding as to any change of domicile by Prudencio to New Jersey, nor was there any finding of domicile of the conjugal

partnership which was the exclusive owner of the assets acquired during the marriage of Prudencio and Carolina.

The Respondents' assertion at page 4 that Prudencio's estate plan was unchallenged for eleven years after his death is misleading in that Charles Unanue had no knowledge of the New Jersey probate proceedings until 1987 or that assets of his parents' conjugal partnership had been placed in a trust and disposed of in violation of 31 L.P.R.A. §§ 2361, 2362, 2367, 2368, 3621, 3624, 3672, 3673 and 3697.

The Respondents' reference at page 4 of the Opposition Brief to "community property laws" of Puerto Rico severely and materially misstates the applicable Puerto Rican law. The legal effect of the entity known as the conjugal partnership is not the same as the existence of community property. Unlike the theory of community property in which the marital assets are owned by one or both of the spouses subject to the rights of the other spouse, the conjugal partnership is a distinct entity having its own citizenship and capable of suing and being sued in its own right. See, *Fernandez-Cerra v. Commercial Ins. Co. of Newark*, 344 F. Supp. 314 (D.P.R. 1972). The conjugal partnership, not the spouse, is the sole owner of all assets acquired during the marriage – even property located in jurisdictions that do not adhere to the doctrine of conjugal partnership. *Sanchez v. Bowers*, 70 F. 2d 715 (2d Cir. 1934). Characterizing the Petitioner's arguments as involving community property laws is most misleading, as under the laws of conjugal partnerships, Prudencio never, as administrator of the conjugal partnership pursuant to 31 L.P.R.A. § 284, had anything other than nominal title to the stock of Goya which was acquired during his marriage.

Respondents' assertion at page 4 that Charles Unanue's forced heirship claims are solely dependent upon Prudencio's domicile are also misleading. As a person born in Puerto Rico, Charles Unanue was a forced heir of Prudencio and Carolina and entitled to his share of their estates under the laws of Puerto Rico pursuant to 31 L.P.R.A. §§ 2361, 2362, 2363 and 2367.

Respondents assert at page 6, note 5, that Prudencio was confined to a small apartment in Puerto Rico. The testimony of the treating physicians all established that Prudencio could have traveled to New Jersey had he so desired, just as the clear evidence established that he went to work at the cannery virtually every day between his hospital discharge in June 1971 and his stroke in January 1972. The testimony also described the apartment as a large, three bedroom, two bathroom apartment with maid's quarters in a luxury condominium building overlooking the beach in the affluent Condado section of San Juan.

The Respondents euphemistically state that the attorneys fees that were awarded were authorized by an express provision of the 1974 Amendment. The provision was not, as one might assume, one for an award of attorneys fees as compensation. Rather, as the agreement makes clear and as the court found, the provision was a penalty clause that measured the penalty at twice the attorney fees and costs payable by the unsuccessful party in litigation on any matter whatsoever, irrespective of who initiated the action. Even though contractual penalty clauses are illegal under any of the arguably applicable

laws[1], judgment was entered in purported reliance on the unlawful clause.

As to the dismissal of the bankruptcy proceedings, Respondents would lead the Court to believe (at page 9 of the Opposition Brief) that all assets and liabilities of the bankruptcy estate reverted to Charles Unanue upon the dismissal, and that Petitioner's counsel so acknowledged. However, the statement of Petitioner's counsel was that the assets reverted to Charles Unanue, not that the liabilities of the estate also revert. As stated in 1999 Bankruptcy Code, Collier Pamphlet Edition, Part 1 (Matthew Bender, 1998) at page 199 (citing House Report No. 95-595, 95th Cong. 1st Sess. 337-38 (1977) and Senate Report No. 95-989, 95th Cong., 2d Sess. 48-9 (1978)):

> The basic purpose of [11 U.S.C. § 349(b)] is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case. * * * Where there is a question over the scope of the subsection, the court will make the appropriate orders to protect rights acquired in reliance on the bankruptcy case.

Respondents are also incorrect in asserting at page 9, note 7, that both the bankruptcy court and the district court concluded that Charles Unanue's bankruptcy was

[1] *Jarro Building Industries Corp. v. Schwartz*, 281 N.Y.S.2d 420 (2d Dep't 1967) (New York law); *Monsen Engineering v. Tami-Githens, Inc.*, 219 N.J. Super. 241 (App. Div. 1964) (New Jersey law). If assessed under Puerto Rican law, the entire agreement is an unlawful waiver of a future inheritance. 31 L.P.R.A. § 3421.

fraudulent. The bankruptcy court found that the allegations against Charles Unanue of misconduct were unfounded. On a renewed motion the bankruptcy court dismissed the Respondents' claims at the close of their proofs. It was only the district court, on appeal from the dismissal and without Charles Unanue having been afforded the opportunity to introduce evidence, that issued the statement that "common knowledge" was the basis for concluding that the bankruptcy was filed in bad faith. The Respondents thus rely upon such "judicial notice" of common rumor to support the assertion that the bankruptcy was fraudulent.

In the same footnote, Respondents allege that the District Court found that Charles Unanue fraudulently hid assets in the name of his wife to defraud creditors. However, the District Court made no such finding. Instead, it found that Charles Unanue's wife, an individual (as distinct from a corporation) is his alter ego and therefore responsible for his debts. See, *Goya Foods, Inc. v. Unanue-Casal*, 982 F. Supp. 103 (D.P.R. 1997), appeals docketed, Nos. 98-1553, 98-1554 (1st Cir). Their appeals are pending.

I

THE STATUTE CITED BY PETITIONER, 48 U.S.C. §733a, ESTABLISHES THE DOMICILE OF PRUDENCIO UNANUE

Respondents argue that 48 U.S.C. § 733a has been held to equate residence with domicile. The leading cases from the courts of Puerto Rico which have so held, *Fiddler v. Sec. of the Treasury*, 85 P.R.R. 302 (1962) and *Buscaglia v. Tax Court*, 68 P.R.R. 322 (1948), did so without any

analysis of the statute or its legislative history. Any persuasiveness of these opinions is undercut by their complete failure to take into account Congress' deliberate abandonment of "domiciled" as the basis for Puerto Rican citizenship and it clear use of the lesser term "resided."

Respondents argue that the legislative history should not be considered because the statute is unambiguous. Petitioner asserts that the use of the word "resided" is indeed unambiguous – that it means what it says, *i.e.*, "resided" rather than "domiciled." By arguing that "resided" means "domiciled," Respondents at best create an ambiguity which is properly resolved by considering Congress' express rejection of "domiciled" in favor of the statutory provision of "resided."

Respondents also contend that a determinative decision by this Court of the effect of § 733a is unnecessary because this statute is not likely to affect anyone other than Charles Unanue at any time. However, it is clear that the determination of how a United States citizen becomes a Puerto Rican citizen has wide ranging, daily consequences for every United States citizen that resides in Puerto Rico from voting, to taxes, to education, to public benefits and entitlements.

II

THE LAWS OF PUERTO RICO ARE APPLICABLE UNDER THE FULL FAITH AND CREDIT CLAUSE

Respondents assert, at page 18, that Puerto Rico's laws are irrelevant because of the finding below that Prudencio was domiciled in New Jersey. As set forth in the

Petition, Prudencio was domiciled as a matter of law in Puerto Rico and hence Puerto Rican statutory law governs as all the relevant contacts involve Puerto Rican citizens and entities, the assets held by them, and contracts signed, notarized and performed in Puerto Rico.[2] But putting aside the domicile of Prudencio, there remains the clear Puerto Rican domicile of the conjugal partnership – a separate *de jure* entity created and existing under Puerto Rican law. It is this entity which owned the assets that Prudencio and Carolina acquired during their marriage, including the stock of Goya issued in Prudencio's name but paid for by Carolina.

To disregard the law of Puerto Rico with respect to conjugal partnerships, as Respondents urge should be done, is to empower one spouse to readily avoid the existence of this legal entity and the rights and obligations flowing therefrom simply by relocating one's self to New Jersey. Not only would this have wide-reaching effects for all marriages entered into under this international legal precept of civil law, but it sets a dangerous precedence for the wholesale disregard for another state's body of law governing other *de jure* entities such as business partnerships. For example, the floodgates are now open for states such as New Jersey to disregard the legal existence of a Massachusetts business trust simply because the forum does not itself provide for the creation and existence of such an entity.

Respondents assert that there is a well-settled conflicts of law principle establishing that the law of the place of domicile of spouses at the time of an acquisition of

[2] Thus, the arguments raised by Respondents in footnote 9, page 14, are irrelevant.

property governs. However, this principle applies only to jurisdictions in which one or both of the spouses is an owner of the property. In conjugal partnership jurisdictions, the owner of the property is the conjugal partnership itself, in this case a legally separate entity created in Puerto Rico and governed by its partnership laws. In addition, Respondents' argument fails because, as previously noted, the courts never found that Prudencio was domiciled in New Jersey at the time he acquired the stock of Goya.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decisions of the New Jersey courts below.

Respectfully submitted,

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